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December 6, 2010

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

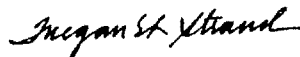
Re: Sandwich Isles Communications, Inc. Petition for Declaratory Ruling
WC Docket No. 09-133

Dear Ms. Dortch:

Sandwich Isles Communications, Inc. ("SIC"), through its undersigned counsel, hereby submits the Public Version of its Comments, filed pursuant to the protective order in this proceeding, in opposition to the Application for Review of AT&T Inc. and in support of SIC's Petition for Reconsideration. The Confidential Version of SIC's Comments is being sent to Commission staff under separate cover.

Should you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Respectfully submitted,



Megan E.L. Strand

Counsel to Sandwich Isles Communications, Inc.

Enclosure

PUBLIC VERSION

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Sandwich Isles Communications, Inc.) **WC Docket No. 09-133**
Petition for Declaratory Ruling)

To: Chief, Wireline Competition Bureau

**SANDWICH ISLES COMMUNICATIONS, INC.
COMMENTS IN OPPOSITION TO AT&T APPLICATION FOR REVIEW
AND IN SUPPORT OF PETITION FOR RECONSIDERATION**

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Summary of Argument

First Issue: Whether Rural LECs Can Recover Broadband Costs from the NECA Pool. AT&T's arguments are wrong, and they highlight the Order's¹ fundamental error. At issue in this case is whether Sandwich Isles Communications, Inc. ("SIC") may lawfully recover the cost of the Paniolo cable network ("Paniolo"), including costs associated with the Paniolo undersea cable connecting SIC's network on five Hawaiian Islands, from the National Exchange Carrier Association ("NECA") traffic sensitive pool ("NECA Pool"). The Order errs in finding that the amount deemed to be "used and useful" (and thus subject to recovery) is an amount equal to what SIC was previously paying for a short-term lease of interisland, undersea cable transport sufficient to carry SIC's voice grade service. AT&T's Application for Review ("AT&T Application")² tries to provide a legal justification for this holding, but in doing so inadvertently highlights the Order's error. AT&T argues that as a matter of law rural local exchange carriers ("RLECs") such as SIC are entitled only to recover from the NECA Pool costs associated with (or sufficient for) voice grade service. More specifically, AT&T argues that Paniolo would never have been necessary absent the need for SIC to carry broadband traffic, and therefore no costs associated with Paniolo are in the public interest or justifiable (the Order found that slightly more than half are justifiable).

AT&T's argument is simply wrong as a matter of law and AT&T knows it. Rural carriers are entitled to recover from the NECA Pool costs associated with both voice grade and broadband service, as demonstrated herein.

Second Issue: Whether the Cost of Spare Fiber is Recoverable from the NECA Pool.

The second issue is how to treat excess Paniolo fiber capacity for cost recovery purposes. The

¹ *Sandwich Isles Communications, Inc. Petition for Declaratory Ruling*, Declaratory Ruling, WC Docket No. 09-133, Wireline Competition Bureau (Sept. 29, 2010) ("Order").

² Application for Review of AT&T Inc., WC Docket No. 09-133 (Oct. 28, 2010) ("AT&T Application").

Order errs in finding the existence of excess fiber capacity as one of three equitable factors that bump SIC's cost recovery from approximately 12 percent to approximately 56 percent. The simple fact is that the FCC has found that most fiber in the U.S. is spare, and as a result NECA has spare fiber Guidelines³ which, if applied to SIC, would result in 100 percent cost recovery.

All of the equitable factors considered by the Bureau – the special role of SIC, the need for route diversity and the need for spare capacity – support 100 percent cost recovery for Paniolo spare fiber, not just 50 percent.

Special role of SIC. AT&T argues that no facts about SIC, its history, its state and federal mandates – including prior FCC orders finding it in the public interest for SIC to construct Paniolo and place its reasonable costs of doing so in the NECA Pool – have any bearing on whether the costs of Paniolo can be recovered. According to AT&T this is true even where, as here, SIC's inability to recover its costs will result in failure to meet its financial obligations, cause SIC to trip its loan covenants, and ultimately seek bankruptcy. According to AT&T the FCC must ignore each of those considerations because the proper subsidy mechanism for SIC is "stimulus funds, universal payments or other government subsidy programs, not inflating regulated rate of return access charges."⁴ AT&T argues that allowing SIC to recover costs for Paniolo is "pouring good money after bad."⁵ AT&T makes no effort to distinguish the prior FCC Study Area Waiver decisions finding that SIC should put its Paniolo costs in the NECA Pool.

Route diversity. The claim that SIC built a fourth bridge where three bridges already existed or bought a Mercedes where there were two cars and public transit is incorrect. The

³ See Sandwich Isles Communications, Inc. Petition for Reconsideration, WC Docket No. 09-133 (Oct. 29, 2010)("Recon Petition") at 2-3 (discussing NECA's "Spare Fiber C&WF Investment Cost Reporting Guidelines") ("Guidelines").

⁴ AT&T Application at 3.

⁵ AT&T Application at 11.

avoided cost of a long-term lease on the other aging, unreliable cables was overlooked in the Bureau Order and by AT&T. AT&T also mischaracterizes the recent undersea cable outage that demonstrates the usefulness of the Paniolo cable as an additional source of needed capacity.

Spare fiber. There was no need for the Bureau to even consider spare fiber as an equitable factor because there is a clear legal rule in the form of the NECA Guidelines. [REDACTED]

[REDACTED]

The only reason the Bureau used an equitable approach is because NECA failed to disclose the Guidelines to the Bureau. Similarly, AT&T – a NECA board member – fails to advise the Commission that NECA has Guidelines that apply to the facts of this case – where the fundamental question is whether SIC should be fully compensated for an undersea cable given that not all fibers are in-use. (NECA's rules are not public, and NECA has refused SIC's counsel access to them. Therefore, there may be other applicable regulations of which SIC is unaware.)

The Bureau should grant SIC's Petition for Reconsideration and award SIC 100 percent cost recovery. The Commission should reject the AT&T Application and should not limit SIC to only \$1.9 million in cost recovery.

**SANDWICH ISLES COMMUNICATIONS, INC.
COMMENTS IN OPPOSITION TO AT&T APPLICATION FOR REVIEW
AND IN SUPPORT OF PETITION FOR RECONSIDERATION**

Pursuant to the Commission's Public Notice,⁶ SIC submits these Comments in opposition to AT&T's Application in this proceeding and in support of SIC's Petition for Reconsideration ("Recon Petition").

Introduction

The Order concluded that SIC was entitled to recover from the NECA Pool approximately 56 percent of its Paniolo costs, consisting of a base amount equal to what SIC was paying to lease interisland voice grade transport prior to Paniolo being put in service ("Base Amount"),⁷ plus 50 percent of SIC's Paniolo costs above the Base Amount. The Order effectively finds that only this Base Amount (about 12 percent of SIC's Paniolo lease cost for 2010) meets the "used and useful" test for determining prudent investment. The rest is awarded due to equitable considerations. The Order concludes that 100 percent is not justified because "a large percentage of the cable is not being used today" (without specifying the amount of non-use).⁸

We briefly summarize the positions of SIC, NECA and AT&T. We then show that controlling law requires the Bureau to award SIC 100 percent of the Paniolo lease costs.

⁶ *Comments Sought on Petition for Declaratory Ruling of Sandwich Isles Communications, Inc.*, WC Docket No. 09-133, Public Notice DA-10-2151 (Nov. 5, 2010).

⁷ The base amount ("Base Amount") is \$1.9 million annually. Paniolo is an undersea cable and related terrestrial facilities that connect SIC's terrestrial fiber networks on five Hawaiian Islands. Forty five percent of Paniolo is undersea and fifty five percent is terrestrial. *See* Recon Petition, Exhibit A, Harper Declaration at para. 31; Comments of Sandwich Isles Communications, Inc., WC Docket No. 09-133 (Aug. 31, 2009) ("SIC Comments") at n. 37; White Paper of Sandwich Isles Communications, Inc. In Support of Inclusion of Its Undersea Cable Costs in the NECA Pool, WC Docket No. 09-133 (June 4, 2010) at 31 ("SIC White Paper"). The Order applies this same recovery logic to the engineering costs required to construct Paniolo. *See* Order at n. 30.

⁸ Order at para. 22.

Positions of the Parties

SIC. In its Recon Petition, and previously in the record,⁹ SIC explained that [REDACTED]

[REDACTED] the cost of deploying just 12 fibers is equal to approximately 98 percent of the total Paniolo costs (fiber being a relatively small part of the cost of laying undersea cable).¹⁰ Thus, SIC argued that there is no basis in fact for the Order's conclusion that a large percentage of Paniolo is not being used today. Second, SIC argued that to the extent spare fiber exists, NECA has a cost allocation and recovery rule that applies to all local exchange carriers ("LECs") nationwide, which says that spare fiber shall be treated exactly as fiber in-use. In other words, using an illustration provided by NECA as part of its Guidelines, if a sheath contains 24 fibers and 8 are in-use for regulated service (and therefore properly allocated to the NECA Pool), the remaining 16 fibers are to be allocated to the NECA Pool.¹¹ [REDACTED]

[REDACTED] Given that the Guidelines apply to all rural carriers in the country and would by itself support 100 percent cost recovery, SIC argued that it was legal error for the Bureau to

⁹ See Comments of the National Exchange Carrier Association, WC Docket No. 09-133 (Aug. 31, 2009), Appendix E, Letter from Carol Brennan, VP Industry Relations- West, NECA, to Alan Pedersen, General Manager, SIC (Apr. 28, 2008)([REDACTED]); see also and Appendix F, Letter from Alan Pedersen, General Manager, SIC, to Carol Brennan, VP Industry Relations- West, NECA (May 7, 2008)([REDACTED])

¹⁰ Recon Petition at 3, 8-9.

¹¹ Recon Petition at 2-3.

consider spare fiber as simply one of several equitable considerations that together support a finding of only slightly more than 50 percent cost recovery.¹²

Third, SIC also argued that the only reason the Bureau did not simply resolve this dispute by applying the NECA spare fiber Guidelines is that over the past eighteen months NECA – and NECA's board member, AT&T – failed to reveal to the Bureau or counsel to SIC the existence of the Guidelines, despite their obvious application to this case. (After SIC's counsel incidentally learned of the spare fiber Guidelines NECA refused to allow counsel access to the fully body of NECA rules and guidelines, which are not publicly available.)¹³

Lastly, SIC argued that the Order implicitly requires SIC to demonstrate future demand characteristics in order to justify full cost recovery for Paniolo. This was error because no other rural LEC in the country must demonstrate future demand in order to recover costs. In short, doing so either (a) establishes a new cost recovery rule without due process (effectively a new spare fiber rule) which will apply to rural LECs across the country, possibly retroactively, or (b) applies a new "Hawaii Spare Fiber Rule" that applies only to SIC. In other words, it is wrong to require SIC to demonstrate future demand when other rural LECs outside of Hawaii are not held to that same standard. Thus, NECA's application of "used and useful" is not only inconsistent with existing law, *i.e.*, the Guidelines, but how such rules have been applied to SIC in the past, as SIC has previously followed NECA's rules and guidelines without issue.

NECA. NECA's position in this case has been that NECA had a responsibility to act as "gatekeeper" to protect the NECA Pool from costs for facilities that are not "used and useful".

¹² See Recon Petition at 2.

¹³ See Letter from Dana Frix, Counsel to SIC, to Marlene Dortch, Secretary, FCC, WC Docket No. 09-133 (Oct. 29, 2010).

NECA argued that Paniolo was not "used and useful" because the 48 fiber cable exceeded the needs of the Hawaiian Homelands. [REDACTED]

NECA failed to disclose the Guidelines that constitute a specific, contemporary rule, as compared to the outdated, generalized "used and useful" standard. NECA does not assert, as AT&T does, that only the costs of basic telephone service are recoverable, as NECA is well-aware that all of its members recover the costs of broadband transmission, which may also constitute a regulated service for NECA members.

AT&T. AT&T is using this proceeding to advocate for changes in the Universal Service Fund ("USF") and access charge rules. Those issues are before the Commission in other proceedings and in this case the Bureau must simply apply existing law. AT&T's characterization of existing law is incorrect. AT&T alleges the Bureau erred in concluding that SIC could recover from the NECA Pool anything above the Base Amount. The premise of AT&T's argument is that by law SIC is permitted to recover from the NECA Pool only a narrow set of costs, costs which are necessary to provide what AT&T vaguely refers to as "regulated" or "basic" telecommunications service, and which AT&T contrasts with "broadband" or "advanced" service. Thus, according to AT&T, the Bureau erred as a matter of law when it gave consideration to any equitable factors, which are unrelated to "basic" telecommunications service. AT&T is wrong as a matter of law about what costs can be recovered from the NECA Pool and AT&T knows it. AT&T's Application is therefore a cynical attempt to urge the FCC to adopt precedent that will contribute to AT&T's ultimate goal – the elimination of access charges. AT&T does so in this case by urging the adoption of a prudence standard applicable only to Hawaii and only to SIC.

Controlling Precedent

It is time for this case to be over, and AT&T's arguments demonstrate this perfectly. There is simply no reasonable or rational argument not to fully compensate SIC for the costs associated with Paniolo. The law in this case is beyond dispute:

- There is a FCC Order on point telling rural LECs they may recover their costs of providing broadband service from the NECA Pool;
- There are NECA Guidelines on point instructing rural LECs throughout the U.S. that they may recover the cost of spare (presently unused) fiber from the NECA Pool; and
- There is a FCC Order on point (the "Study Area Waiver Order") acknowledging that it is in the public interest for SIC to build a high cost network connecting the Hawaiian Islands and ordering SIC's reasonable costs into the NECA Pool.

Thus, straightforward precedent resolves all questions in this case and SIC's Paniolo costs are fully recoverable from the NECA Pool.

The only reason why this case exists is because the cost of building a network in Hawaii is high, and NECA – perhaps spurred by its board member AT&T – withheld material funding to SIC, presumably on the theory that SIC would, under pressure, accept less compensation than that to which it is clearly entitled.¹⁴

Related to this are concerns that on a per customer basis SIC's high costs make it a leading recipient of USF and NECA funds.¹⁵ But this cannot really be the issue because in the

¹⁴ NECA's letter denying SIC's recovery of Paniolo costs concluded that SIC's Paniolo costs were not "used and useful" without ever explaining why, stating only that "it does not appear" that SIC's Paniolo costs "meet the standards of the 'used and useful' doctrine and the associated prudent expenditure standard." See SIC White Paper at 13-14 (describing NECA's odd denial letter).

¹⁵ It is interesting that AT&T raises the issue of SIC's receipt of USF high-cost support. From 2007-2009, AT&T led all recipients having received \$1,302,540,713 in High Cost payments. See FCC Response to U.S. House of Representatives Committee on Energy and Commerce Universal Service Fund Data Request of June 15, 2010: Part 1 Top Ten Recipients of High-Cost Support (2009, 2008, 2007) (June 23, 2010).

Study Area Waiver Order the Bureau rejected claims that SIC should not be able to participate in the NECA Pool or receive USF funding because its high costs would make it a leading recipient.¹⁶

In this case the Bureau has sought to be fair by brokering what it believes are competing interests. But in doing so it has been fundamentally unfair since compromise would only be appropriate in the absence of clear legal precedent and practice.

SIC built Paniolo after receiving an order from the Commission finding that its reasonable costs of building a network planned more than 10 years ago and approved by Rural Utilities Service ("RUS") engineers would be put in, and recovered from, the NECA Pool. In its application in that case SIC specifically stated that without the ability to recover its costs from the NECA Pool SIC could not construct its network and indeed would go bankrupt. There is nothing fair, right, or respectful to Hawaii about now trying to broker a compromise which says: we have to protect AT&T and the NECA Pool by ignoring our prior finding upon which SIC's existence is based, by ignoring NECA's own Guidelines about how to deal with spare fiber and which govern how carriers all over the U.S. mainland recover costs for spare fiber, and you, SIC, will have to bear the consequences, even if that means you will not be able to service the debt on the network that is critical to the Hawaiian Homelands. Through the Order, the Bureau subjects SIC to unequal treatment vis-à-vis all other rural carriers on the U.S. mainland, essentially creating a different standard for the only rural carrier in Hawaii, which no other NECA member on the U.S. mainland has to follow. It is not fair. It is not right. It is not legal.

¹⁶ See Recon Petition at 17. Further, this condition is not static. Per customer or per line subsidy statistics will diminish when (a) SIC obtains new local customers as a result of increased development of the Hawaiian Homelands or possibly competition by SIC whereby SIC obtains customers previously served by Hawaiian Telcom, and/or (b) SIC removes costs from the NECA Pool due to use of the Paniolo fiber for purposes not covered by the NECA tariff.

Unequal Treatment of Hawaii

In arguing that allowing SIC to recover Paniolo costs is simply "pouring good money after bad", AT&T reveals its legal perspective on service to the Hawaiian Homelands. More pointedly, AT&T argues that to the extent the Order attributed any value to equitable considerations such as the "special role" SIC plays in extending service to native Hawaiians and the Hawaiian Homelands, "those are justifications for stimulus funds, universal service payments or other [unspecified and non-existent] government subsidy programs...."¹⁷ AT&T might be right about how subsidies should work in the future, but AT&T is certainly wrong that this is how they operate under current law. The FCC issued an order directly on point – the Study Area Waiver Order – which examined SIC's purpose, its admittedly high costs, arguments that it would be a leading recipient of USF and NECA Pool funds, and concluded that SIC's reasonable costs should be recovered from the NECA Pool.¹⁸ And, there is no basis – none whatsoever – for SIC to be a football in a debate about how to transform the NECA Pool and access charge subsidies. Ultimately that involves the question of whether, or under what conditions, rural LEC network and service will continue to be subsidized, and that is not the central question in this proceeding.

SIC has sought to demonstrate that the very fact that a dispute exists in this case reveals that SIC, as the only RLEC in Hawaii, has been the subject of deeply unequal treatment by NECA vis-à-vis U.S. mainland LECs, whose fiber deployment costs (including spare fiber costs) are daily put into, and recovered from, the NECA Pool. This disparate treatment, both in terms of how NECA treats other LECs and how NECA has treated SIC's past submissions, is

¹⁷ AT&T Application at 3.

¹⁸ See Recon Petition at 17.

illustrated by AT&T's arguments. AT&T sweeps aside how NECA actually works (permitting rural LECs to recover broadband costs from the NECA Pool), the Guidelines, and the FCC's own holding in the Study Area Waiver Order in order to promote its argument that to the extent SIC requires subsidization, the FCC should develop some new subsidy mechanism outside of the NECA Pool. AT&T does not even attempt to provide a foundation for why the FCC should ignore the Study Area Waiver Order finding it in the public interest to place SIC's costs in the NECA Pool. Nor does AT&T lay any kind of a foundation for why SIC should be treated differently from other rural LECs who are permitted to put their reasonable costs, including the costs of spare fiber, into the NECA Pool.

The simple fact is that the question of whether SIC's admittedly high costs should be included in the NECA Pool has already been explicitly answered by the Study Area Waiver Order, and there is absolutely no reason why the Bureau should shy away from this precedent. It is the law of the case and it would be clear error to issue an order attempting to broker a compromise that will satisfy AT&T by compensating SIC at a factor less than that which applies to mainland rural LECs. Given that the Study Area Waiver Order found it proper for SIC's reasonable network costs to be included in the NECA Pool, and given the existence of the Guidelines, it is not now SIC's burden to demonstrate that its reasonable network costs belong in the NECA Pool. Requiring SIC to do so is to accord SIC lesser legal treatment than is accorded all other rural LECs on the U.S. mainland.

I. AT&T's Creative Interpretation That Current Law Permits Rural LECs to Only Recover Costs of Voice Grade Service (and Not Broadband Service) Is Wrong and AT&T Knows It

AT&T argues that NECA Pool funds only pay for regulated services and only basic telecommunications services qualify as regulated. Thus, according to AT&T, the Bureau lacked

discretion to increase Paniolo cost recovery above the Base Amount due to three equitable considerations (each of which find that the increased broadband capacity represented by Paniolo is in the public interest),¹⁹ because those equitable considerations "bear no relationship to the underlying regulatory problem" to be solved; namely that NECA Pool costs only support "basic" telecommunications services and can serve no other purpose.²⁰ AT&T is wrong. As demonstrated below, the law provides that rural LECs may use NECA Pool funds to support the construction of multi-use, IP-enabled, fiber-based, broadband networks. Any decision issued by the Bureau or Commission in this case should straightforwardly reject AT&T's claim.

Why does AT&T argue such a plainly wrong point? It does so because without that argument there is no foundation for what is effectively AT&T's real claim, namely that the Bureau was wrong in taking into account any specific facts relating to Hawaii, SIC and Paniolo. Only by stripping this case of its relevance to Hawaii does AT&T have any chance of convincing the FCC to disallow SIC's Paniolo costs. But all roads in this case return to the facts and the law: SIC caused Paniolo to be built; that network is entirely devoted to services that are supported by the NECA Pool; the FCC has issued an order finding that SIC's reasonable costs should be recovered from the NECA Pool; and NECA has a rule stating that where a cable is used for regulated purpose and contains spare fibers, the total cost of the fiber shall be placed in the NECA Pool.

¹⁹ The three equitable considerations cited in the Order are: (1) the unique geographic challenges in Hawaii (*i.e.*, that unlike all states other than Alaska, Hawaii needs high cost undersea cable to serve intrastate needs and the fact that Paniolo increases interisland route diversity); (2) the "special role" that SIC plays in serving the Hawaiian Homelands, the vast majority of which were not previously served by any telecommunications carrier due to the high cost of doing so; and (3) the public interest in Paniolo having been built to include spare capacity.

²⁰ AT&T Application at 4, n. 11 (citing *Keyspan-Ravenwood v. FERC*, 348 F.3d 1053, 1057 (D.C. Cir. 2003)).

A. AT&T is Wrong that the Law Precludes Rural Rate of Return Carriers Such as SIC From Using NECA Pool Revenue to Support Multi-use, IP-Enabled Fiber-Based Networks, Such as Paniolo

AT&T's Claims. AT&T claims that Paniolo lease costs above the Base Amount are not properly included in the NECA Pool. The Order "cites four 'equitable' considerations and based on three of those considerations ... decide[s] that fully half of [the Paniolo costs] could be included within the NECA Pool and thus could be recovered from interstate ratepayers."²¹ The problem with this, AT&T posits, is that the costs exceed what AT&T believes would be necessary to provide "regulated telecommunications services."²² Thus, AT&T says these costs should be excluded because SIC committed to the Paniolo lease in order to "promote its own private interests in providing unregulated broadband and video services."²³ In short, AT&T argues that there is a wedge between "basic" and "advanced" telecommunications services. The former can be compensated from NECA Pool revenues; the latter cannot.

Specifically, AT&T claims that by asking NECA to include its Paniolo costs in the NECA pool, SIC is attempting to cause "ratepayers of regulated services to subsidize the costs of ... advanced services."²⁴ Based upon the divide posited by AT&T between "basic" and "advanced" services, paying SIC any amount above the Base Amount "saddles ratepayers of [SIC's] regulated services with million of dollars in expenses that do not – and will not ever – benefit them in any way."²⁵

²¹ AT&T Application at 9.

²² AT&T Application at 1 (emphasis supplied).

²³ *Id.*

²⁴ AT&T Application at 11.

²⁵ AT&T Application at 2.

Rural LECs Recover Broadband Network Costs from the NECA Pool. AT&T, of course, is simply incorrect. SIC, like all other rate of return carriers, may elect to have its broadband transmission classified as a regulated service. The Commission in a prior order allowed rural rate of return carriers to make this election and found that all of them preferred to do so:

[A]ll rate-of-return carriers that have participated in this proceeding have stated that they wish to continue offering broadband transmission as a Title II common carrier service. We have provided them with this option.²⁶

Presently, over 800 rural carriers participating in the NECA tariff system treat their broadband DSL offerings as a regulated service by including their DSL costs in the NECA Pool.²⁷ SIC is unaware of any instance in which such costs have been challenged by NECA. Thus, AT&T is wrong that SIC is improperly seeking to include in the NECA Pool costs for allegedly "unregulated" broadband service.

Not only is this an uncontroversial point, AT&T has acknowledged it. By way of example, earlier this year in advocating for the use of USF funds for broadband deployment AT&T noted:

²⁶ *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities, et. al.*, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, WC Docket nos. 04-242, 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14927 at para. 138 (2005) ("Broadband Order") (internal citations omitted).

By way of brief history, in the *Computer Inquiries* the Commission classified service into two categories, "basic" and "enhanced," and "required facilities-based providers of 'enhanced services' to separate out and offer on a common carrier basis the 'basic service' transmission component underlying their enhanced services." See *In the Matter of Framework for Broadband Internet Service*, Notice of Inquiry, GN Docket No. 10-127, at para. 12 (June 17, 2010) ("Broadband NOI") (internal citations omitted). After a series of court decisions aimed at clarifying the Commission's authority to regulate broadband, the Commission extended the "information service" classification to broadband Internet services, including DSL. However, the Commission allowed providers, at their election, to continue to offer broadband transmission as a Title II, regulated telecommunications service. Broadband NOI at para. 21.

²⁷ Broadband NOI at n. 53.

Commission precedent does not foreclose broadband Internet access providers from offering broadband 'telecommunications services.' On the contrary, the Commission has given providers a choice: they may either (1) offer retail consumers solely an integrated service that inextricably intertwines broadband transmission with Internet access service, or (2) offer a pure broadband transmission services as a 'telecommunications service' under Title II.²⁸

Thus, as AT&T notes, broadband transmission can be offered as a Title II regulated service. While AT&T may not offer broadband as a Title II service, the Commission has recognized that "all RoR [rate of return]-regulated carriers (which encompasses most rural LECs) offer broadband transmission on a stand-alone Title II common carrier basis."²⁹

AT&T's contention that SIC's costs should be excluded from the NECA Pool is directly contradicted by the NECA access charge tariff itself. NECA Tariff No. 5, the traffic sensitive access charge tariff, contains an entire section on DSL services.³⁰ SIC is among numerous other NECA members who participate in the NECA DSL Access Service Tariff ("NECA DSL Tariff"). Through the NECA DSL Tariff, "NECA members offer retail end users and wholesale Internet service providers a DSL access service that 'enables data traffic generated by a customer-provided modem to be transported to a DSL Access Service Connection Point using the Telephone Company's local exchange service facilities.'"³¹

It is worth noting that NECA has not alleged, as AT&T now does, that only the cost of providing basic telephone service can be included in the NECA Pool. NECA could not make

²⁸ AT&T, "The Federal Communications Commission Has Statutory Authority to Fund Universal Broadband Service Initiatives", GN Docket No. 09-51, at 5 (Jan. 29, 2010) ("AT&T USF White Paper").

²⁹ See Broadband NOI at n. 54 (quoting Comments of Organization for the Promotion and Advancement of Small Telecommunications Companies, GN Docket No. 09-51, at 30-31 (June 8, 2009)).

³⁰ NECA, Tariff F.C.C. No. 5, at 17-80 to 17-87.3, Section 17.6 ("NECA DSL Tariff").

³¹ Broadband NOI at n. 53 (citing NECA DSL Tariff at 8-1, Section 8.1.1).

such an assertion without jeopardizing its relationship with the majority of its members, each of whom have constructed multi-use networks that provide both basic telecommunications and broadband transmission such as DSL and who recover the costs of such networks from the NECA Pool.

In sum, rate of return carriers including SIC may treat broadband transmission, which is generally thought of as an "advanced" or "information" service, as a regulated telecommunications service for which access charge recovery is appropriate under the Broadband Order and under the NECA DSL Tariff.

AT&T is Arguing for a Change in the Law; Here the Bureau Must Apply Existing Law. It is no secret that AT&T would like to see the Commission adopt comprehensive reforms to the USF and access charge systems that would effectively eliminate access charges and restrict the USF funds to only one, lowest cost broadband provider in each area. AT&T has argued that access charges should be eliminated and that the Commission should use a competitive application procedure, rather than a reverse auction procedure, to select one carrier in each area to receive broadband support.³² AT&T's Application seeks to impose this policy on SIC when it argues that SIC should receive no compensation above the Base Amount and instead the full measure of SIC network needs should be paid for by some unspecified "government subsidy program." These contentions are before the Commission in rulemaking proceedings. The Bureau must apply existing law to SIC, just as SIC relies upon and follows the practices that have been used and accepted by NECA. The Bureau has no authority to re-write the rules outside of the pending rulemaking proceedings.

³² See generally AT&T Comments, WC Docket No. 10-90 (July 12, 2010) ("AT&T Comments"); see also AT&T Reply Comments, WC Docket No. 10-90 (Aug. 11, 2010) ("AT&T Reply Comments").

B. In Pending Rulemaking Proceedings AT&T and NECA Acknowledge that Rural LECs Use Access Charges to Support the Cost of Advanced Networks

Not only is AT&T wrong that NECA Pool revenues cannot be used to support multi-use networks, but AT&T's contention stands in stark contrast to numerous statements made by both AT&T and NECA in other policy proceedings. These statements demonstrate the lack of any principled basis underlying AT&T's request that the Commission deny 100 percent cost recovery to SIC under current law.

AT&T. AT&T recognizes that carriers such as SIC serve rural areas "where no private sector business case can be made" and that such carriers depend upon both "legacy high cost support and intercarrier compensation payments"³³ such as access charges. Indeed, AT&T recognizes that more than half of RLEC revenue comes from a combination of USF high cost support and access charges³⁴:

The Commission already has correctly recognized that ongoing support may be "necessary to sustain service in areas that already have broadband because of the existing high-cost universal service program." But it should recognize that, in many cases, *carriers also have relied on revenues derived from intercarrier compensation to fund broadband deployment. As several rural carrier associations observed in their comments on the NBP, these two sources of revenue can easily amount to more than half of a carrier's revenues.*³⁵

³³ AT&T Comments at 4-5.

³⁴ AT&T Comments at n. 10.

³⁵ AT&T Comments at 11-12 (footnotes omitted; emphasis added). *See also*, AT&T Comments at 14 (emphasis added) (stating that "we have nevertheless identified several issues with the BAM that the Commission should consider if it adopts a model to distribute CAF support that is designed to maintain broadband service in areas that already have broadband due to legacy high-cost support payments *and intercarrier compensation-related revenues.*") (emphasis added).

Elsewhere AT&T describes the high cost USF program and federal and state intercarrier compensation mechanisms as "inherently and intimately intertwined."³⁶ Thus, AT&T's contention that SIC should use only some form of unspecified USF "or other government subsidy" funds to support advanced services in Hawaii and not access charges is at odds with AT&T statements made contemporaneously in unrelated proceedings.

Ironically, at the same time AT&T urges the Bureau to deny funding to SIC for fear some of it may be used to provide services in Hawaii that go beyond "basic", AT&T simultaneously urges the Commission elsewhere to take steps to encourage the states to remove barriers to "the transition from circuit-switched to IP-based networks" and goes so far as to suggest that the Commission withhold USF funds from states that refuse to permit those funds to be used to support the transition to IP-based networks.³⁷ Apparently, AT&T's position is that the Commission should encourage the use of funds for "IP-based networks" among the states in general, but not in Hawaii where it would cost too much.

NECA. Like AT&T, NECA has made numerous statements demonstrating that NECA acknowledges the use of access charges by rural rate of return carriers to support the construction and operation of advanced networks. In a joint letter to the members of NECA, the National Telecommunications Cooperative Association, the Organization for the Promotion and

³⁶ "[WC Docket No. 10-90] provides the Commission an important opportunity to undertake long overdue reforms to its high-cost universal service support mechanisms, as well as to *the inherently and intimately intertwined, federal and state intercarrier compensation mechanisms* on which many carriers continue to rely to support facilities and services serving the majority of consumers living in rural America and other high cost areas." AT&T Reply Comments at 2 (footnotes omitted; emphasis added).

³⁷ "We therefore encourage the Commission to seek comment on what steps it can take to encourage states to eliminate any legacy service or other regulatory requirements that would impede the transition from circuit-switched to IP-based networks, such as by making federal universal service funding for broadband conditional on the states removing such regulations." AT&T Reply Comments at 7 (footnote omitted).

Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance, these associations told their members (which include SIC) that "the national associations representing your interests as rural rate of return carriers (RLECs) made a joint filing with Commission" and the letter went on to highlight the important points made in the joint filing, including:

RLECs have made significant investments in multi-use, broadband capable networks which serve 37% of the national geography. Their continued ability to provide comparable telecommunications services to rural Americans is vital to our nation's economic development, national security and public health and safety.

These investments have been made possible due to a time-tested cost-recovery structure consisting of rate-of-return regulation, NECA pooling, intercarrier compensation and USF support.³⁸

These statements, made jointly by NECA and all of the other rural carrier associations, demonstrate how uncontroversial it is for rural LECs to use access charges to fund the construction and operation of "multi-use, broadband capable networks."

In the actual filing referred to in the letter, NECA goes on record with the Commission in defense of the current rules, which NECA recognizes permit the pooling of the costs of advanced networks and services. NECA notes that, "USF and access revenues (switched and special) account for the majority (70 percent) of the typical RLEC's income streams."³⁹ NECA argues that it is entirely appropriate for rate of return carriers to offer advanced communications services:

³⁸ NECA, *et. al.*, "Unified Rural Voice Achieved" at 1 (May 18, 2010) *available at* www.neca.org.

³⁹ Joint Reply of NECA, *et. al.*, WC Docket No. 10-90, at 7 (Aug. 8, 2010)("Joint Reply").

RoR regulation continues to play a key role in enabling RLECs to bring an evolving level of basic and advanced communications services to many of the nation's most remote, sparsely populated and expensive-to-serve rural areas.⁴⁰

In short, both NECA and AT&T readily acknowledge in policy proceedings before this Commission that NECA Pool funds are used for the deployment of multi-use, broadband-capable networks. AT&T's argument to the contrary in this proceeding serves only to highlight fundamental error in the Order, discussed immediately below.

C. The Order was Likewise Wrong in Concluding that Compensating SIC for a Short-Term Lease Sufficient Only for Voice Grade Service Constitutes "a Reasonable Application of the Used and Useful Standard"

The fundamental holding of the Order is as follows:

NECA has proposed paying [Sandwich Isles] 1.9 Million a year, approximating the amount that [Sandwich Isles] was previously paying ... *to lease voice grade capacity on another undersea cable*. Based on the record here, we interpret that amount as reflecting a reasonable application of the threshold 'used and useful' considerations, which we ordinarily expect to be sufficient to resolve revenue requirement questions.⁴¹

This holding makes two mistakes. First, it assumes that SIC is entitled to recover from the NECA Pool only the cost of voice grade capacity. As demonstrated above, that is wrong. Therefore, applying this standard discriminates against the State of Hawaii, and SIC as the only RLEC in Hawaii, by applying to SIC a standard that does not apply to rural LECs throughout the U.S. mainland. Second, it assumes that SIC may recover from the NECA Pool only the cost of a short-term lease arrangement. There is no foundation in law for this. SIC has a public interest obligation to ensure that it has facilities sufficient to satisfy its customer's long-term needs.

⁴⁰ Joint Reply at 19.

⁴¹ Order at para. 18 (emphasis supplied).

II. Contrary to AT&T, Equitable Factors Support the Award Of 100 Percent of the Paniolo Costs for the Reasons Discussed in the SIC Recon Petition

AT&T argues that "none of the so-called 'equitable' factors cited in the [Order] actually supports the decision to allow Sandwich Isles" to recover Paniolo costs above the Base Amount from the NECA Pool.⁴² AT&T is incorrect and, on the contrary, SIC is entitled to 100 percent of the Paniolo costs for the reasons discussed in the SIC Recon Petition.

A. NECA and AT&T Failed to Advise the Bureau of Relevant Law – the Spare Fiber Guidelines

Throughout this proceeding NECA failed to advise the Bureau of the Guidelines. Likewise, in its Application AT&T – a NECA board member – failed to advise the Commission of relevant and controlling law – spare fiber Guidelines – much less make any effort to distinguish the law based upon the facts of this case. Under the Guidelines, SIC is entitled to 100 percent cost recovery and the equitable factors did not need to be considered. However, even if the equitable factors were relevant, they support 100 percent cost recovery and AT&T's characterizations are incorrect.

B. AT&T is Wrong that it was Arbitrary for the Order to Compensate SIC Above the Base Amount

AT&T argues that SIC is only entitled to the Base Amount, because that is the cost SIC was paying for a short-term lease of interisland voice grade transport prior to Paniolo being put in service in August 2009.⁴³ "Here, the record evidence as well as the factors [discussed by

⁴² AT&T Application at 12.

⁴³ AT&T Application at 9.

AT&T in its Application] demonstrate that allowing any recovery beyond the \$1.9 million that is spent to lease existing cables would be arbitrary."⁴⁴

AT&T is wrong for several reasons. First, it assumes that SIC is entitled to recover from the NECA Pool only voice grade transport.⁴⁵ For the reasons discussed in Section I above, that is incorrect. If SIC is correct about this, the analysis ends and SIC should be permitted to place all reasonable costs associated with Paniolo into the NECA Pool.

Second, AT&T does not even attempt to provide a foundation for the proposition that the proper recovery standard for interisland transport is a short-term lease of facilities (as opposed to a long-term lease or construction of a carrier's own facilities). Third, the uncontroverted facts are that SIC endeavored to obtain long-term interisland transport with sufficient capacity for voice grade and broadband service from the two existing undersea cables, and the cost of such leases was greater than the cost of constructing Paniolo.

Specifically, the record evidence is that before constructing Paniolo SIC obtained price quotes from Hawaiian Telcom, Inc. ("HTI") and Pacific Lightnet ("PLNI") for capacity sufficient for its customers' voice grade and broadband services, and received quotes that were between \$9 and \$13 million a year for only undersea capacity on the HTI and PLNI cables, and no terrestrial facilities.⁴⁶

Fourth, even if HTI or PLNI had offered terms that made it economic to lease interisland transport, it was prudent for SIC to build Paniolo. Both cables are old, and nearing the end of

⁴⁴ AT&T Application at 15.

⁴⁵ Note that if AT&T is correct, then NECA has been applying the wrong standard to over 1000 rural LECs on the U.S. mainland.

⁴⁶ See Recon Petition at n. 68 (citing SIC Comments at 14-15, 18).

their useful life,⁴⁷ meaning that they may not be fully reliable. Additionally, it was unclear whether the existing cables would have sufficient capacity to meet future demand for SIC, HTI, and PLNI. This was proven true when the PLNI cable failed during the course of this proceeding.⁴⁸

C. The "Special Role" of SIC Justifies Compensating SIC for Paniolo Costs

The Order finds that the "special role" of SIC in serving Hawaii and the Hawaiian Homelands is a factor that weighs in support of compensating SIC for Paniolo costs.⁴⁹ AT&T disagrees, finding that there is no basis for SIC's rural network to be subsidized. Perhaps reflecting AT&T's position that access charges and the NECA Pool, like all rural subsidies, should be eliminated entirely, AT&T argues simply that any subsidy of SIC's network is "flatly

⁴⁷ See Recon Petition at n. 75-76 (citing SIC Comments at 14-15).

⁴⁸ See Letter from Dana Frix, Counsel to SIC, to Marlene Dortch, Secretary, FCC, WC Docket No. 09-133 (July 30, 2010). Even if the cables did not fail, at least in the case of HTI, it is not clear that adequate capacity would ultimately be available in the future. As HTI has represented to the Commission in a separate proceeding, "[t]he existing capacity of HT's [deep sea, undersea fiber optic network]... severely limits HT's ability to accommodate growth and launch new services, especially broadband services." Petition of Hawaiian Telcom, Inc. for Waiver of Sections 54.309 and 54.313(d)(vi) of the Commission's Rules, WC Docket No. 08-4, at 3 (Dec. 31, 2007) ("HTI Petition"). And, there was no assurance that HTI would be able to fund the necessary upgrades. HTI has stated elsewhere that HTI could not obtain financing to make further upgrades to its network because, "HT is subject to numerous covenants which preclude HT from taking on additional debt." Reply Comments of Hawaiian Telcom, Inc., WC Docket No. 08-4, at 18-19 (Mar. 5, 2008) ("HTI Reply Comments"). Given the financial covenants mentioned by HTI, there was no assurance that HTI would be able to fund the necessary upgrades to the HTI cable, even if SIC committed to long-term use of the HTI cable. Ownership of HTI changed hands several times, from GTE to Verizon to Carlyle, and HTI went into bankruptcy from which HTI did not emerge until 2010, as the Bureau knows. Entering into a long-term lease to fund upgrades to the HTI cable would entail risk that those upgrades might never occur due to HTI financial covenants and other complex financial issues, while entering into a long-term lease with a new entity, Paniolo, with a clean balance sheet, entailed none of these risks. Indeed, it is ironic that AT&T mischaracterizes Paniolo as "a complex web of transactions." AT&T Application at 6. Paniolo was a simple option with the engineering, construction and financing costs being clear and reasonable, while the HTI option involved a "complex web of transactions" that it would take a bankruptcy court until 2010 to unravel.

⁴⁹ Order at para. 20.

inconsistent with the Commission's principle that costs should be borne [by] the causer of the costs."⁵⁰ SIC, in AT&T's mind, is simply "a classic case of pouring good money after bad."

SIC will not repeat here why the Hawaiian Homelands are important to Hawaii, or SIC's role in serving the Hawaiian Homelands.⁵¹ It is enough to point out that it is AT&T's legal position that serving the Hawaiian Homelands is legally irrelevant at best and a waste of resources at worst.

D. The Paniolo Cable Increases Route Diversity in Hawaii

The Order finds that Paniolo serves the public interest by increasing the route diversity of interisland transport in Hawaii.⁵² AT&T argues that there are two to three existing undersea cables, therefore there are "backup arrangements for all interisland facilities"⁵³ and thus there is no need for additional route diversity.⁵⁴ The fact is that before Paniolo there were only two cables dedicated to serving Hawaiian interisland needs, as the Southern Cross cable is an interstate/international cable. HTI's cable connects four of the Hawaiian Islands and leaves two islands, Molokai and Lanai, served by microwave. The PLNI cable serves all six Hawaiian Islands. Both are nearing the end of service, and, when the PLNI cable failed recently only one cable was serving intrastate Hawaiian needs, meaning that backup capacity was undoubtedly needed. Putting its head in the lion's mouth, AT&T then argues that the fact that one of the two

⁵⁰ AT&T Application at 11.

⁵¹ See SIC Comments at 1-5 (describing the Hawaiian Homelands and SIC's role serving the Homelands).

⁵² Order at para 19.

⁵³ AT&T Application at 10.

⁵⁴ *Id.*

preexisting cables failed during the course of this proceeding also does not support the need for route diversity. This reflects the utter irresponsibility of AT&T's comments.

Lastly, AT&T argues that even if Hawaii was left with one operating cable during the PLNI outage, the redundancy would only benefit Hawaiian local exchange customers of the other service providers "not Sandwich Isles' ratepayers."⁵⁵ This is simply silly not to mention wrong. Route diversity either benefits Hawaiian citizens or it doesn't.⁵⁶ This is just another way for AT&T to say that the FCC shouldn't pour good money after bad. Investing in service to the Hawaiian Homelands was not "bad", so adding the Paniolo cable is not pouring good money after bad.

E. AT&T is Wrong That Spare Capacity on Paniolo is Not Compensable

The Order found that once the determination to build Paniolo was made it was reasonable to include some amount of spare capacity.⁵⁷ AT&T does not argue this point directly, presumably given its knowledge of the spare fiber Guidelines. Instead AT&T takes a SIC comment out of context. In its Reply Comments SIC said that HTI's undersea cable "generally" has adequate capacity to serve existing SIC needs, but that in evaluating whether to construct Paniolo it had to recognize that as HTI's own usage increased there likely would not be enough capacity for SIC, particularly given that it is unlikely that HTI could invest in increasing the

⁵⁵ AT&T Application at 11.

⁵⁶ AT&T mischaracterizes SIC's report of this incident as "false" based upon a similar accusation made by PLNI. *See* AT&T Application at 3 and n. 7. First, neither AT&T nor PLNI dispute that the outage occurred. Second, the criticism of SIC is misplaced because SIC did not report that Wavecom traffic was re-routed to the Paniolo cable. Rather, SIC reported that Oceanic Time Warner traffic was re-routed to Paniolo, and neither AT&T nor PLNI dispute this fact.

⁵⁷ Order at para. 21.

capacity on its cable due to its bankruptcy.⁵⁸ Indeed, HTI has affirmatively represented in pleadings filed with this Commission that absent additional federal subsidy support it would not be able to make "necessary improvements to its network and facilities."⁵⁹

F. Cases Cited in the Order Support Compensating SIC for Paniolo Costs

AT&T contends that neither of the cases cited in the Order support compensating SIC for Paniolo costs. SIC demonstrated conclusively that this is wrong and that the *PSV Cable* and *Comsat* decisions support the award of 100 percent recovery to SIC.⁶⁰ SIC will not repeat those arguments here. However, what is notable about AT&T's argument is that AT&T's characterization of the key aspects of those decisions mirrors exactly the circumstances in this case. Here is AT&T's characterization of those cases, and why recovery was allowed in those cases:

[I]n those cases where recovery was allowed, the regulated entity had legitimate claims that its challenged investment was prudent when made to address reasonably anticipated demand for regulated service and that the facilities at issue were not fully utilized due to unforeseeable changed circumstances.⁶¹

AT&T distinguishes this case on the basis that "here, there is no question that [SIC's] investment was at no point in time reasonably believed necessary to benefit ratepayers of regulated service."⁶²

The rashness of this statement reflects the disregard AT&T has for the very serious problem represented by 100 years of non-service to the Hawaiian Homelands. To reach this

⁵⁸ Reply Comments of Sandwich Isles Communications, Inc., WC Docket 09-133 (Sept. 10, 2009) at 12.

⁵⁹ HTI Reply Comments at 13; *see supra* n. 48 and accompanying text.

⁶⁰ Recon Petition at 5-8.

⁶¹ AT&T Application at 12.

⁶² *Id.*

conclusion AT&T necessarily must overturn the policy conclusions of the Hawaiian Homelands Commission, the Hawaii PUC, and the FCC about whether it was in the public interest for SIC to construct and operate it network.⁶³

The simple fact is that SIC had a reasonable basis for the prudence of its investment, both a decade ago when the network was planned and approved by RUS, and at the point when each aspect of the network has been constructed. And, it is commonly understood that for over the past decade, RUS funds are used to construct multi-use networks. As RUS Administrator Jonathan Adelstein wrote to Chairman Genachowski last month:

RUS has required program participants to provide advanced services since the early 1990's... Since 1993, RUS has required any company to which it provides financing to have the capacity to provide one Mbps broadband service. Today, RUS borrowers are building facilities that are comparable to those deployed in urbanized areas. The RUS engineering ethic is also designed to ensure that rural communities continue to receive a quality of service that is comparable to that enjoyed in urban and suburban regions, consistent with the mandate of Section 254 of the Telecommunications Act of 1996.⁶⁴

Therefore, AT&T's Application is founded upon a misunderstanding of the fundamental law of this case, and the Bureau should, on reconsideration, decide that the FCC orders and NECA Guidelines provide the basis to award full recovery for SIC's Paniolo costs.


⁶³ See SIC Comments at 1-5.

⁶⁴ Letter from Jonathan Adelstein, Administrator, RUS, to Julius Genachowski, Chairman, FCC (Nov. 9, 2010). A copy of the letter is attached as Exhibit 1.

III. CONCLUSION

Whereby, for the foregoing reasons, the Bureau should reconsider the level of recovery afforded SIC under the Order and provide 100 percent recovery of SIC's Paniolo lease costs from the NECA Pool, and the Commission should reject the AT&T Application.

Respectfully submitted,

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December 6, 2010

PUBLIC VERSION

EXHIBIT 1

Adelstein Letter



**United States Department of Agriculture
Rural Development**

November 9, 2010

The Honorable Julius Genachowski
Chairman, Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Genachowski:

The RUS is a policy, planning, and lending agency within the USDA. For over 75 years, the RUS and its predecessor, the Rural Electrification Administration, have been advocates for rural consumers, as well as a lender that supports the construction and deployment of modern utility infrastructure throughout rural America. The RUS, USDA, and the Federal Communications Commission have a shared mission to ensure that all Americans enjoy the benefits of modern telecommunications technologies and a history of working together to advance that goal. The RUS welcomes the opportunity to share our data and research with the FCC as it works to reform the universal service support system. Robust economic growth and job creation in rural America depend increasingly on the quality and reach of broadband networks. Nowhere is that as true as it is in rural America, where distance, density, and remoteness have restrained economic activity. Broadband networks not only create economic opportunity, but open unparalleled access to health care, educational, cultural, and public safety opportunities that are essential to the quality of life for over 50 million Americans who live in rural areas.

The RUS has gained great insight into the economics of providing safe, reliable, and affordable utilities service through the administration of its loan and grant programs. The agency currently manages a \$56 billion portfolio consisting of loans that support the construction of water and waste treatment systems, electric systems, and telecommunications and broadband networks in rural communities. The RUS telecommunications program currently has over \$4.2 billion in outstanding principal, which will increase substantially with awards this year under the American Recovery and Reinvestment Act (ARRA). The current rural Telecommunications Infrastructure and Broadband loan portfolio consists of approximately 2337 active loans to borrowers committed to building and upgrading broadband capable networks across rural America. In addition to ARRA programs, the agency also administers broadband grant and distance learning and telemedicine programs. The RUS finances fundamental infrastructure systems that are vital to the economic growth and sustainability of rural communities. The RUS fully and enthusiastically shares the Commission's goal of expanding broadband deployment and adoption throughout America. Reforming existing Federal Universal Service Fund (USF) support mechanisms as well as the inter-carrier compensation (ICC) system for the broadband era can advance that goal. These revenue streams, often combined with affordable lending from RUS, have made otherwise high-cost rural areas more attractive and less expensive to serve, both for initial construction and for continuous upgrades, giving many rural consumers access to the latest telecommunications technology by supporting continuous improvements in

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1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice or TDD).

service quality. This has promoted the national interest in connecting all Americans to the most advanced telecommunications networks. This could not have been accomplished without such mechanisms to support rural areas that are higher cost due to lack of density. At the same time, as demonstrated by the overwhelming response to the broadband programs in the ARRA, there remain significant areas of rural America that lack access to modern broadband services.

RUS finances telecommunications infrastructure under two titles of the Rural Electrification Act. Title II of the Act is the basis for the traditional Telecommunications Program that started financing telephone service in 1949, but today lends for broadband infrastructure. Its borrower base is predominantly rural incumbent local exchange carriers (ILECs). Title VI is the basis for the Broadband Loan Program, which was specifically intended for broadband infrastructure, with a borrower base ranging from rural ILECs to broadband-only providers. The main differences between the programs relate to eligibility requirements. The Broadband Loan Program targets rural communities, while the traditional Telecommunications Program targets high cost service areas, including very high cost regions beyond communities.

Two other programs include the Distance Learning and Telemedicine (DLT) grant and loan program which funds the purchase of end user telecommunications equipment to enhance the quality of education and health care in rural areas, and the Community Connect grant program which funds the construction and deployment of broadband networks in some of America's poorest and most remote communities. These programs have provided over \$500 million to improve rural networks and services. DLT alone has improved service in 1,428 counties receiving telemedicine facilities, and 1,758 counties receiving distance learning facilities. Over 3000 health care facilities have received telemedicine funding, and over 4000 educational facilities have received distance learning funding. Community Connect has established broadband in 195 small rural communities that were totally unserved.

RUS grant and loan programs are among the few sources of affordable financing available to small, rural independent providers and tribally-owned entities. The RUS maintains a strong technology neutral policy across its telecommunications and broadband loan and grant programs and encourages all borrowers to build the most efficient systems needed to meet consumer demand. The RUS Telecommunications Infrastructure and Broadband Loan programs have financed telecommunications and broadband network construction to some of the most remote and economically distressed regions of the country. The typical RUS borrower and grantee operate in markets with extremely low population density, often high unemployment rates, an aging workforce, and challenging topography.

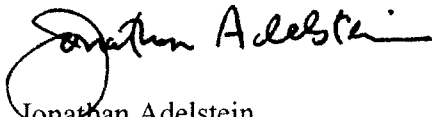
In telecommunications, RUS financing is dependent on sufficient, specific, and predictable revenues. USF support and ICC revenues are among the factors evaluated in virtually every RUS loan. Only 4 out of the 480 active borrowers of the RUS Telecommunications Infrastructure loan program did not receive rural high cost USF support. RUS loans and loan guarantees are an efficient and effective means to expand broadband networks in rural areas. Loan programs and loan/grant combinations enable the RUS to finance more projects per dollar of budget authority than would be possible if the same amount of budget authority were dedicated to pure grant programs. In so doing, RUS lending programs advance the purpose of

the National Broadband Plan (NBP). For taxpayers, the repayment record of RUS borrowers has been excellent, with a less than 1 percent default rate.

RUS has required program participants to provide advanced services since the early 1990's. Under 7 C.F.R. Part 1751, which implemented the English Amendment to the Rural Electric Loan Restructuring Act of 1993, RUS requires borrowers to coordinate with state commissions on devising network modernization plans. This regulation led to the requirement that borrowers must provide digital voice and data services to end users to keep pace with metropolitan network infrastructure developments. Since 1993, RUS has required any company to which it provides financing to have the capacity to provide one Mbps broadband service. Today, RUS borrowers are building facilities that are comparable to those deployed in urbanized areas. The RUS engineering ethic is also designed to ensure that rural communities continue to receive a quality of service that is comparable to that enjoyed in urban and suburban regions, consistent with the mandate of section 254 of the Telecommunications Act of 1996. RUS engineering standards facilitate continuous upgrades in a network that is capable of seamlessly evolving over time. We are proud of that record of success.

The Commission and the RUS can work together to ensure that the right mix of incentives are available to attract private sector investment into otherwise uneconomic areas. The RUS is eager to continue its longstanding partnership with the FCC as it develops a framework for transforming universal service support mechanisms. Our agencies have a shared goal of increasing broadband deployment and adoption throughout rural America. RUS has decades of experience and data which can be used to test assumptions, compare models to reality, and validate ideas. Increasing broadband access to more households and businesses in rural areas is a national imperative. The Commission can consider the historic success of the RUS in financing rural broadband networks. I appreciate the time your staff has spent time with our team to understand how FCC programs and policies interact with RUS lending and grant making, and look forward to our continued discussions.

Sincerely,



Jonathan Adelstein
Administrator
Rural Utilities Service

cc: The Honorable Michael J. Copps, Commissioner
The Honorable Robert M. McDowell, Commissioner
The Honorable Mignon Clyburn, Commissioner
The Honorable Meredith Attwell Baker, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2010, I caused a copy of of the foregoing *Sandwich Isles Communications, Inc. Comments In Opposition to AT&T Application for Review and In Support of Petition for Reconsideration* to be served to the following parties of record as indicated:

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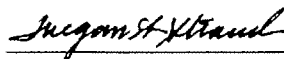
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